REMARKS

Applicant requests further examination and reconsideration of the application in view of the amendments and the following remarks.

1. Status of the Claims

Claims 1, 39 – 41 and 43 – 70 are pending in this application. Claim 42 has been cancelled. Claim 46 has been amended to depend from claim 40.

2. § 112 Rejections

Claims 42 and 46 were rejected under 35 U.S.C. §112 ¶ 2 as being vague and indefinite. Claim 42 has been cancelled and claim 46 has been amended to depend from claim 40.

Claims 66-67 were rejected under 35 U.S.C. § 112 ¶ 1 as containing subject matter not disclosed in the application. Applicant respectfully traverses this rejection as support for claims 66 and 67 is found in the application at page 15 line 27 through page 16 line 4.

3. Prior Art Rejections

Claims 1, 39, 49-65 and 68-70 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 3,544,332 to Leebens (Leebens) in view of U.S. Patent No. 5,709,902 to Bartolomei et al. (Bartolomei). Applicant respectfully traverses this rejection as Leebens and Bartolomei, either alone or in combination, fail to teach or suggest the subject matter recited in the present method claims.

Neither Leebens nor Bartolomei teach or suggest a method of applying a second coating material to protect a first heat-sensitive material applied to a food item as recited in the present claims. Leebens teaches that a single coat of granular flavor additive is applied to the outer surface of a puffed cereal piece. The cereal piece is subsequently

flattened by a flaking process. This traps the additive at the flake surface concentrating the impact of the flavor upon the consumer. Leebens, col. 3 line 57 through col. 4 line 24. Similarly, Bartolomei simply teaches coating a wet cereal piece with a single coat of sugar slurry. The slurry coated cereal piece is subsequently toasted to dry the slurry thereby forming a single-coated sugar cereal piece. Bartolomei, col. 5 line 46 to col. 6 line 52. Nor is there any reasonable combination of Leebens and Bartolomei that teaches or suggests the present invention. First, there is no reason for one skilled in the art to combine the two references. It appears that the Examiner employed hindsight, picking and choosing elements from the prior art using the present invention as a guide to determine which parts to pick and which to reject. Such a reconstruction of the claimed invention results in an improper obviousness determination. Second, even with such a hindsighted reconstruction, the claimed invention does not result. Leebens makes cereal flakes with entrapped additives, which may be only sugar. Leebens, col. 4, lines 69-71. Bartolomei makes a ready-to-eat cereal flake that has sugar thereon – the same material as Leebens. Nor does Leebens draw any distinction between only sugar and other additives. Third, there is no suggestion or motivation to combine the references. Thus, Leebens in view of Bartolomei does not teach or suggest the present invention.

Finally, Bartolomei actually teaches away from the present claims. One embodiment of Bartolomei teaches that a heat-sensitive vitamin layer is applied onto the sugar coating after the toasting step. *Id.* at col. 7 lines 21-30. The present claims, on the other hand, recite that the heat-sensitive material is applied directly to the food item which is then coated with a second heat protective coating and subsequently heated to a temperature between about 35°C-350°C. Hence, Bartolomei's teaching of applying a heat-sensitive material after the food piece has been toasted would lead one skilled in the art in a direction divergent from the path taken by the Applicant.

In view of the foregoing, it is respectfully submitted that the present claims are patentable over Leebens in view of Bartolomei and that the Section 103 rejection should be withdrawn.

4. Claim Objections

Claims 40-48 and 66-67 were objected to for being dependent on a rejected claim. As set forth above the subject matter recited in independent Claim 1 and the claims dependent thereon is neither taught nor remotely suggested by the cited prior art. Applicant therefore respectfully requests that the objection to claims 40-48 and 60-67 be withdrawn.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached pages are captioned "**VERSION WITH MARKINGS TO SHOW CHANGES MADE**".

CONCLUSION

In view of the foregoing response, claims 1, 39–41 and 43–70 are allowable. An indication of allowance is solicited at an early date.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

Claim 42 has been cancelled.

Claim 46 has been amended as follows.

46. (Amended) A method according to claim 40 [42] wherein said secondary coated hand-held food item comprises from about 15% to about 30% by weight of said first edible, heat-sensitive food material; and from about 30% to about 60% by weight of said second edible food coating material, with the balance comprising the initial formed hand-held food item; and wherein said second edible food coating material is a liquid syrup composition comprising from about 50% to about 70% by weight sucrose, from about 5% to about 15% by weight flavoring ingredients, from about 1% to about 6% by weight vegetable oil, and the balance being water.